

Senate Bill No. 578

(By Senators Trump, Carmichael, Ferns,
Gaunch, D. Hall, Karnes, Leonhardt,
Maynard, Nohe and Williams)

[Originating in the Committee on the Judiciary;
reported February 27, 2015.]

A BILL to amend and reenact §23-4-8d of the Code of West Virginia, 1931, as amended; and to amend and reenact §23-5-7 of said code, all relating to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for nonorthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims.

Be it enacted by the Legislature of West Virginia:

That §23-4-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §23-5-7 of said code be amended and reenacted, all to read as follows:

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ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-8d. Occupational pneumoconiosis claims never closed
for medical benefits with exception of
settled claims.**

1 Notwithstanding the provisions of subdivision (4),
2 subsection (a), section sixteen of this article, with the exception of
3 claims settled pursuant to article five, section seven of this
4 chapter, a request for medical services, durable medical goods or
5 other medical supplies in an occupational pneumoconiosis claim
6 may be made at any time.

7 **ARTICLE 5. REVIEW.**

8 **§23-5-7. Compromise and settlement.**

9 (a) ~~With the exception of medical benefits for~~
10 ~~nonorthopedic occupational disease claims, the~~ The claimant, the
11 employer and the Workers' Compensation Commission, the
12 successor to the commission, other private insurance carriers and
13 self-insured employers, whichever is applicable, may negotiate a
14 final settlement of any and all issues in a claim wherever the claim

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1 is in the administrative or appellate processes: Provided, That in
2 the settlement of nonorthopedic occupational disease claims, the
3 claimant shall be represented by legal counsel. If the employer is
4 not active in the claim, the commission, the successor to the
5 commission, other private insurance carriers and self-insured
6 employers, whichever is applicable, may negotiate a final
7 settlement ~~of any and all issues in a claim except for medical~~
8 ~~benefits for nonorthopedic occupational disease claims~~ with the
9 claimant and ~~said~~ the settlement shall be made a part of the claim
10 record. Except in cases of fraud, no issue that is the subject of an
11 approved settlement agreement may be reopened by any party,
12 including the commission, the successor to the commission, other
13 private insurance carriers and self-insured employers, whichever
14 is applicable. Any settlement agreement may provide for a
15 lump-sum payment or a structured payment plan, or any
16 combination thereof, or any other basis as the parties may agree.
17 If a self-insured employer later fails to make the agreed-upon
18 payment, the commission shall assume the obligation to make the

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1 payments and shall recover the amounts paid or to be paid from
2 the self-insurer employer and its sureties or guarantors or both as
3 provided in sections five and five-a, article two of this chapter.

4 **(b)** Each settlement agreement shall provide the toll-free
5 number of the West Virginia State Bar Association and shall
6 provide the injured worker with five business days to revoke the
7 executed agreement. The Insurance Commissioner may void
8 settlement agreements entered into by an unrepresented injured
9 worker which are determined to be unconscionable pursuant to
10 criteria established by rule of the commissioner.

11 **(c)** The amendments to this section enacted during the
12 regular session of the Legislature in the year ~~one thousand nine~~
13 ~~hundred ninety-nine shall~~ 2015 apply to all settlement agreements
14 executed after the effective date.